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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 494/2012

Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015))

Submitted by:	H.B. (represented by counsel, Rachid Mesli, of the Fondation Alkarama)
Alleged victim:	The complainant
State party:	Algeria
Date of complaint:	22 February 2012 (initial submission)
Date of present decision:	6 August 2015
Subject matter:	Torture in detention for the purpose of obtaining confessions
Procedural issues:	None
Substantive issues:	Cruel, inhuman or degrading treatment; obligation to systematically monitor interrogation techniques and practices; obligation to carry out a prompt and impartial investigation; right to an effective remedy; right to compensation; prohibition against using confessions obtained under torture
Articles of the Convention:	1; 2 (1); 11; 12; 13; 14; and 15; and, alternatively, article 16

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 494/2012*

Submitted by:	H.B. (represented by counsel, Rachid Mesli, of the Fondation Alkarama)
Alleged victim:	The complainant
State party:	Algeria
Date of complaint:	22 February 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 August 2015,

Having concluded its consideration of complaint No. 494/2012, submitted on behalf of Hachemi Boukhalfa under article 22,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention against Torture

1. The author of the complaint dated 22 February 2012 is Hachemi Boukhalfa, an Algerian citizen born on 10 March 1972 in Ouargla, Algeria. He claims that Algeria has violated his rights under article 2 (1), 11, 12, 13 and 14, read in conjunction with article 1 and, alternatively, with article 16 of the Convention against Torture. The complainant is represented by counsel, Rachid Mesli, of the Fondation Alkarama.

The facts as submitted by the complainant

2.1 The complainant is a resident of Hay Al Moukhadama in Ouargla and works as a used car dealer. On 9 January 2011, at about 10 a.m., six or seven armed men in civilian clothing arrived at the complainant's home in two vehicles. They forcibly arrested the complainant and took him away in one of the vehicles. Family members and neighbours witnessed the scene. The individuals in question neither identified themselves, nor showed an arrest warrant, nor stated any grounds for the arrest.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

2.2 It was not until the complainant was in the vehicle that they identified themselves as officials of the Intelligence and Security Department. They lowered the complainant's head so that he would not know where he was being taken. They informed him that he was accused of terrorism and the murder of three persons. Only after his release did the complainant learn that he had been detained at the Intelligence and Security Department military barracks in the Tazegrat district of Ouargla.

2.3 During his interrogation, the complainant was accused of terrorism, the killing of three people and possession of a Kalashnikov. He denied all these charges. He was then tortured for eight days by several officers who acted overtly. The methods of torture included the use of a cloth soaked with water, soap and other cleaning agents, blows to the face and beating of the buttocks with sticks. The complainant was also compelled to crawl on a wet floor, causing injury to his knees. For several days, he was kept handcuffed, lying on his back, naked and suffering from the cold. The complainant was also forced to eat human excrement.

2.4 On the fifth day of detention, during a torture session, the complainant was thrown down the stairs, causing injury to his right ankle. Officials of the Intelligence and Security Department then took him to the military hospital in Tamanrasset, where doctors set his ankle in plaster.

2.5 Under torture, the complainant stated that he had a weapon in his possession. He was then taken back to his home, which was searched by police officers, in vain. They then arrested the complainant's mother, who was questioned for several hours at the Intelligence and Security Department barracks. In the final days of his detention, Intelligence and Security Department officers insisted that the complainant buy them a vehicle at his own expense in exchange for his release. On 17 January 2011, after eight days of incommunicado detention, at about 4 p.m., Intelligence and Security Department officers brought the complainant back to his home and violently threw him from the vehicle onto the ground when they arrived at the house.

2.6 The day after his release, on 18 January 2011, the complainant went to see a forensic physician, who gave him a medical certificate that prescribed 12 days of sick leave because of his state of health. The complainant told the physician that he had been attacked by strangers, knowing that the practitioner would never give him a certificate if he had implicated Intelligence and Security Department officers. The complainant also photographed the wounds sustained as a result of being tortured.[1]

2.7 As regards the exhaustion of domestic remedies, a few days after his release, the complainant requested a hearing with the Public Prosecutor of the Ouargla Court and the Chief Prosecutor of the Court,[2] whom he told about his arrest and to whom he reported the treatment that he received while in detention. The Prosecutors dismissed the complaint. As the prosecution did not act, the complainant filed a complaint (No. 1643/2011) on 12 April 2011 with the Ministry of Justice, which was received by the criminal affairs and amnesty procedures department, which issued an acknowledgement of receipt.[3] On this occasion, he was assured that an investigation would be launched as soon as possible.

2.8 On 28 November 2011, the complainant was summoned to appear as a witness in a case separate from his own. When he tried to use the opportunity to make a statement and testify about the torture inflicted during his own detention, the judge expelled him from the courtroom. On the same day, the complainant applied to the Prosecutor of the Ouargla

[1] The photos were annexed to the communication before the Committee.

[2] The complainant does not mention the name of the Court.

[3] A copy of the receipt of the complaint sent to the Public Prosecutor, which was issued by the Ouargla Court, is annexed to the complaint before the Committee.

Court to draw his attention to the legal steps taken since January 2011 and obtain information on his complaint. The Prosecutor made it clear to him that his complaint would never be considered, y telling him: "Take my advice, imagine that it was only a dream. I cannot do anything for you, since this is about military security".

2.9 The complainant made a final appeal to the Public Prosecutor by registered letter with an acknowledgement of receipt, dated 28 January 2012,[4] to ask him to launch an investigation. To date, no action has been taken on any of the complainant's requests. The complainant considers, therefore, that he is not bound under article 22 (5) (b) of the Convention to exhaust other remedies, as all those already pursued have turned out to be unavailable, ineffective and unreasonably prolonged.

The complaint

3.1 The complainant claims to be the victim of torture within the meaning of article 1 of the Convention. As regards severe physical and mental pain and suffering, the complainant has unquestionably been subjected to extremely serious ill-treatment. He was brutally beaten with blows to the face and buttocks — treatment which, in any case, has been categorized as torture by the Committee.[5] The complainant was also subjected to the use of a cloth soaked with water, soap and other cleaning agents and was compelled to crawl on a wet floor, causing injury to his knees. For several days, he was kept handcuffed, lying on his back, naked and suffering from the cold. The treatment left marks that were still visible months later, as a video that the complainant posted on an Internet site attests. This was compounded by constant abuse and humiliation, such as being made to eat human excrement — acts which in themselves constitute a form of torture. The complainant's statements about torture are supported by the medical certificate dated 18 January 2011.

3.2 The complainant adds that such torture was inflicted intentionally for the purpose of obtaining a confession and putting pressure on him for personal gain, namely, extortion to acquire a vehicle. The suffering was inflicted on him by members of the Intelligence and Security Department, who are public officials. Every element of torture has thus been established, thereby constituting a violation of article 1 of the Convention by the State party with respect to him.

3.3 In the alternative, the complainant claims that the acts committed constitute at the very least a violation of article 16 of the Convention.

3.4 The complainant also claims a violation of his rights under article 2 (1), to be read in conjunction with article 1 of the Convention, by virtue of the fact that the State party neglected its duty to prevent (Algerian law does not contain any provision to prohibit the use of confessions or statements extracted under torture as evidence) and to punish acts of torture (a number of crimes of torture have reportedly gone unpunished since 1992).

3.5 The complainant states that article 11 of the Convention was violated because the State party has not fulfilled the requirement to keep under systematic review methods and practices used during interrogations. Algerian law does not provide for adequate safeguards for the protection of persons in detention. Article 51 of the Code of Criminal Procedure provides for the possibility of extending police custody for up to 12 days, a particularly excessive period that, in practice, is often further extended. Moreover, the right of persons in custody to counsel is not guaranteed under the national law, nor does any legal provision

[4] A copy of the complaint to the public prosecutor is annexed to the complaint before the Committee.

[5] See, inter alia, communications No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro*, decision adopted 24 November 2004, para. 5.3; and No. 269/2005, *Ben Salem v. Tunisia*, decision adopted 7 November 2007, para. 16.4.

prohibit the use of statements obtained under torture as evidence. These facts make monitoring interrogations more difficult.

3.6 The complainant indicates that the State party failed to meet the requirement under article 12 of the Convention to conduct a prompt and impartial investigation. The complainant applied to the competent authorities repeatedly without obtaining satisfaction (see paras. 2.6-2.9 above).

3.7 According to the complainant, the State party violated article 13, under which it must provide the complainant with effective remedies by investigating and punishing the perpetrators of the alleged violations. The complainant argues that, despite numerous complaints and steps taken to make his case, no criminal proceedings were initiated. The complainant notes that, according to the Committee's jurisprudence, article 13 does not require formal lodging of a complaint of torture under the procedure laid down in national law, nor does it require an express statement of intention to bring a criminal case. It is enough for the victim simply to bring the facts to the attention of an authority of the State for the State to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated.[6] The complaints and steps made by the complainant, however, turned out to be in vain, resulting in a violation of article 13 of the Convention.

3.8 The complainant indicates, furthermore, that article 14 of the Convention was violated, as the State party failed to comply with the obligation to ensure the complainant's right to compensation. He refers to the Committee's jurisprudence that article 14 recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress.[7] The failure to follow up on the complaints of the victim and to launch an immediate public inquiry constitutes a violation of article 14.

State party's lack of cooperation

4. On 6 March 2012, 31 May 2013, 14 October 2013 and 16 June 2014, the State party was requested to submit information concerning the admissibility and merits of the communication. The Committee notes that it has received no information in this connection. It regrets the State party's refusal to communicate any information on the admissibility and/or merits of the complainant's claims. The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and indicating the steps, if any, that the State might have taken to remedy the situation. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

[6] The complainant cites communications No. 59/1996, *Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.6; and No. 291/2006, *Ali v. Tunisia*, decision adopted 21 November 2008, para. 3.13.

[7] See communication No. 341/2008, *Hanafi v. Algeria*, decision adopted 3 July 2011, para. 9.7.

5.2 Regarding the exhaustion of domestic remedies, the Committee recalls with concern that, despite the three reminders sent to it, the State party has not provided any observations on the admissibility or merits of the communication. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

Consideration of the merits

6.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainant's allegations.

6.2 The Committee notes the complainant's allegation that he was arrested and detained incommunicado by the Department of Intelligence and Security for eight days, from 9 to 17 January 2011; that, during his interrogation, he was subjected to acts of torture inflicted on him by several officers who acted overtly; that the treatment suffered included the use of a cloth soaked with water, soap and other cleaning agents, blows to the face and beating of the buttocks with sticks; that the complainant was also compelled to crawl on a wet floor, causing injury to his knees and that, for several days, he was kept handcuffed, lying on his back, naked and suffering from the cold. The Committee notes the allegation that the complainant was forced to eat human excrement and that, on the fifth day of detention, during an interrogation, the complainant was thrown down the stairs, causing injury to his right ankle. The Committee notes that, according to the complainant, such treatment resulted in the security forces' obtaining a confession and extorting a substantial amount of money for the purchase of a vehicle. The Committee further notes that the complainant has provided a number of documents, including an acknowledgement of receipt of his complaint to the Public Prosecutor, dated 12 April 2011, a repeated complaint, dated 28 January 2012, and a medical certificate and photographs documenting bodily injuries and maiming. It further notes that the State party has not refuted any of these allegations. The Committee thus concludes that all the constituent elements of torture are established and that the treatment meted out constitutes a violation of article 1 of the Convention.

6.3 The Committee also considers that the complainant's secret detention and the humiliation and inhumane conditions of detention that accompanied the acts of torture inflicted on him also constitute a violation of article 1 of the Convention.

6.4 Having found a violation of article 1, the Committee will not consider separately the claims of a violation of article 16 of the Convention.

6.5 The Committee notes the complainant's allegation that he was the victim of a violation of article 2 (1), read in conjunction with article 1, inasmuch as the State party failed in its obligations to prevent and punish the acts of torture inflicted on the victim. The Committee notes that the State party has not refuted these allegations. However, the complainant has presented considerable evidence, including the acknowledgement of his complaint to the Public Prosecutor, dated 12 April 2011, and the repeated complaint, dated 28 January 2012, setting out the steps taken to obtain an effective remedy against the acts suffered and the perpetrators of the acts, in vain. In the light of the information before it, the Committee finds that the complainant was and continues to be the victim of a violation of article 2 (1), read in conjunction with article 1 of the Convention.

6.6 The Committee also notes the complainant's argument that the State party has not fulfilled the requirement to keep under systematic review methods and practices used during interrogations, and that there is no guarantee under Algerian law to prevent acts such as those suffered by the complainant. The Committee recalls that, in its concluding observations dating from 2008, it recommended that the State party should establish a

national register of detained persons.[8] In view of the fact that of the State party has not provided any information for the present individual communication to refute the allegations of the complainant, the Committee finds, in the case in point, a violation of article 11 of the Convention.

6.7 The Committee notes that, according to the complainant, a few days after his release, he requested a hearing with the Public Prosecutor of the Ouargla Court and the Chief Prosecutor of the Court, whom he told about his arrest and to whom he reported the treatment that he received while in detention; that the courts dismissed the complaint; that he subsequently lodged a complaint dated 12 April 2011 with the Ministry of Justice, to no avail; and that, on 28 November 2011, after meeting with the Prosecutor, he was told that, as it is a matter of military security, no action would be taken. The Committee also notes that the complainant reportedly made a final appeal to the Public Prosecutor by registered letter, dated 28 January 2012, to ask him to launch an investigation and that, to date, no reply to this letter has been received. The Committee notes that the State party has made no comment on these claims. It recalls the obligation to carry out a prompt and impartial investigation wherever there is reasonable grounds to believe that an act of torture has been committed.[9] In the absence of an explanation by the State party as to the reasons for the failure, since the events in 2011, to conduct any investigation whatsoever into the acts of torture denounced on many occasions by the complainant, the Committee finds a violation of article 12. The Committee also considers that the State party has failed to fulfil its obligation under article 13 of the Convention to ensure the complainant's right to complain and to have his or her case promptly and impartially examined by the competent authorities.[10]

6.8 Regarding the alleged violation of article 14 of the Convention, the Committee notes the complainant's claim that the State party has deprived him of any form of redress by failing to act on his complaint and by not immediately launching a public investigation. The Committee recalls that, under its article 14, States parties to the Convention recognize not only the right to fair and adequate compensation, but also the requirement to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation and measures to guarantee that there is no recurrence of the violations, always bearing in mind the circumstances of each case.[11] Given the lack of a prompt and impartial investigation, despite the complainant's numerous claims that he was tortured, which were corroborated by a medical certificate and photographs taken on the day after his release, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

7. The Committee against Torture, acting under article 22 (7) of the Convention, finds that the facts before it disclose a violation of article 1; article 2 (1), read in conjunction with article 1; article 11; article 12; article 13; and article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Pursuant to rule 118 (5) of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to conduct an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the complainant's treatment, and to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has

[8] See CAT/C/DZA/CO/3, para. 5.

[9] See *Ali Ben Salem v. Tunisia*, para. 16.7.

[10] See communication No. 402/2009, *Abdelmalek v. Algeria*, decision adopted on 23 May 2014, para. 11.7.

[11] See *Ali Ben Salem v. Tunisia*, para. 16.8.

taken in response to the views expressed above, including compensation for the complainant.